IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.6032 OF 2005
IN
FIRST APPEAL NO. 2461 OF 2005.

New India Assurance Co.Ltd. ... Applicant.
Versus.
Yellappa Laxman Pawar & others. ... Respondents.

Shri S.M.Vidyarthi for the Applicant.

Shri M.B.Kotak for the Respondents Nos.1 & 2.

CORAM : ABHAY S.OKA, J.

DATED : 17th MARCH, 2006.

P.C.:

1. Rule. Shri Kotak waives service for the Respondents. Service on Respondent No.3 is dispensed with.

2. Shri Vidyarthi appearing for the Applicant submitted that in view of the clear factual and legal position, the Applicant-Insurance Company could not have been held liable to satisfy the award which was passed against the insurered. He submitted that there was a strong primafacie case for the Appellant to succeed in the First Appeal and therefore, the stay deserves to be granted. He states that the amount which is already deposited by the Insurance company should not be permitted to be withdrawn by the Claimants.

3. The impugned Judgment and Award is in the nature of a money decree. Normally there cannot be any stay of

execution of the money decree. In the present case even if the Applicant-Insurance Company succeeds in the Appeal, the award against the insured will remain. Therefore, even if the appeal is allowed, the Insurance Company can always recover the amount from the insured who is the owner of the vehicle concerned. There is no reason to deprive the original claimants of the compensation awarded to them.

4. Hence the prayer for stay is rejected. It is made clear that withdrawal of the amount by the original Claimants will be subject to the final outcome of the Appeal.

Judge.